REMARKS/ARGUMENTS:

Claims 1, 2, 6-20, 22, 25-29 and 31-33 are canceled without prejudice to subsequent revival. Applicants reserve the right to prosecute these claims in a divisional application.

Claims 46-49 are pending in the application and stand rejected. Claim 46 has been amended. Claims 47 and 48 depend directly or indirectly on amended claim 46. No new matter was added by this amendment.

Double Patenting

Claim 49 is rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-6 of U.S. Patent No. 6,414,132 (Pavlakis et al.) in view of Coulombe et al.

Claim 49 is rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-9 of U.S. Patent No. 6,174,666 (Pavlakis et al.) in view of Coulombe et al.

Claims 46-48 are rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 3-12 of U.S. Patent No. 6,291,664 (Pavlakis et al.) in view of Coulombe et al.

Claims 46-48 are rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 3-6 of U.S. Patent No. 5,965,726 (Pavlakis et al.) in view of Coulombe et al.

Claims 46-48 are rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-10 of U.S. Patent No. 5,972,596 (Pavlakis et al.) in view of Coulombe et al.

Applicants hereby file terminal disclaimers as required by 37 C.F.R. §1.321 over U.S. Patent Nos. 6,414,132 ('132); 6,174,666 ('666); 6,291,664 ('664); 5,965,726 ('726); and 5,972,596 ('596). U.S. Patents '132; '666; '664; '726; and '596 and the subject application are commonly owned. Applicants respectfully request that the double patenting rejection under the judicially created doctrine of obviousness-type double patenting be withdrawn in light of the terminal disclaimers.

Rejection Under 35 U.S.C. §112

Claims 46-48 are rejected under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner states that the specification has disclosed a minimum number of species, e.g., HIV gag and env genes; and that the structure of the instability/inhibitory element which Applicant considers as being essential to the function of the claim are not fully described to support the broad genus of the claims.

To the extend that the rejection applies to the claims as amended, Applicants respectfully traverse the rejection.

Applicants have amended claim 46 to refer to a synthetic gene which encodes a "HIV-1 gag or HIV-1 env" protein. Claims 47 and 48 depend directly or indirectly on amended claim 46. Support for this amendment can be found on page 10, lines 28-30; page 11, lines 3-5; page 12, lines 22-23; page 16, line 31; page 22, line 35; page 35, lines 27-35; page 40, lines 18-20; page 43, line 29; and throughout the specification. No new matter was added by this amendment. The amendment is made to expedite allowance and should not be construed as an acquiescence in the rejection.

In light of the foregoing amendment and remarks, Applicants respectfully request withdrawal of the rejection of claims 46-48 under 35 U.S.C. §112, first paragraph.

CONCLUSION:

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is urged. If the Examiner believes a telephone conference would aid in the prosecution of this case in any way, please call the undersigned at 650-326-2400.

Respectfully submitted,

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